

PMPD COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Salton Sea Unit 6)	02-AFC-2
Geothermal Project)	
_____)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 10, 2003
9:10 A.M.

Reported by:
Peter Petty
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Presiding Member

Robert Pernell, Associate Member

HEARING OFFICER, ADVISORS

Garret Shean, Hearing Officer

Scott Tomashefsky, Advisor

E.V. (Al) Garcia, Advisor

STAFF PRESENT

Paul A. Kramer, Staff Counsel

Robert Worl, Project Manager

Mike Ringer

James Brownell

PUBLIC ADVISER

Margret Kim

APPLICANT

Bernard Raemy, Project Development Manager
CalENERGY Operating Corporation

Jerry P. Salamy
CH2M HILL

INTERVENORS

Tanya A. Gulesserian, Attorney
Adams, Broadwell, Joseph and Cardozo
California Unions for Reliable Energy

ALSO PRESENT

Cathy Woollums, Vice President of Environmental
Services
Mid-American Energy Holdings Company

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P R O C E E D I N G S

9:10 a.m.

HEARING OFFICER SHEAN: Good morning;

I'm Garret Shean, the Hearing Officer in the Salton Sea proceedings. With me this morning is our Chairman and the Presiding Member, Commissioner Keese, to my right, his Advisor, Mr. Tomashefsky. To my left is the Second Member, Commissioner Robert Pernell and his Advisor, Al Garcia.

COMMISSIONER PERNELL: Good morning.

HEARING OFFICER SHEAN: We're arrayed like this because the Chairman has a bug and he's been nice about not exposing all the rest of us to it. He's saving his voice for just the most profound things that need to be said. So when he chimes in, you'll know it's important.

Anyway, at this point we'd like the parties to introduce themselves and we'll begin with the applicant.

MR. RAEMY: Yes, good morning. Bernard Raemy, Business Development Manager with the applicant. With me here today is Jerry Salamy with CH2M HILL. Delighted to be here this morning, good morning.

1 HEARING OFFICER SHEAN: 'Morning. Mr.
2 Kramer.

3 MR. KRAMER: Good morning; Paul Kramer,
4 Staff Counsel. Bob Worl will be with us in a
5 minute; and Mike Ringer from the air quality staff
6 is also with us.

7 HEARING OFFICER SHEAN: All right, thank
8 you. And our Public Adviser.

9 PUBLIC ADVISER KIM: Yes, good morning.
10 My name is Margret Kim; I'm the Public Adviser for
11 the Energy Commission. I'm here to provide any
12 procedural assistance to members of the public.

13 HEARING OFFICER SHEAN: All right. And
14 I'll indicate for the record there is nobody else,
15 other than the court reporter, among the people
16 who have been mentioned or identified. We do have
17 Ms. Woollums on the phone, and she is
18 participating in the proceedings. Let me just
19 have you, Ms. Woollums, again identify for the
20 record that you are here, since our prior
21 conversation and the spelling of your name was all
22 done off the record.

23 MS. WOOLLUMS: Sure. Cathy Woollums,
24 W-o-o-l-l-u-m-s, Vice President of Environmental
25 Services with Mid-American Energy Holdings

1 Company, which is the parent company to the
2 applicant.

3 HEARING OFFICER SHEAN: Thank you very
4 much.

5 At this point let me just indicate that
6 the Committee has received one written filing in
7 advance of this hearing which was from the
8 Commission Staff; a 38-page memorandum outlining
9 the staff's comments on the PMPD.

10 Is there anything else that was filed by
11 the applicant or that we should know about?

12 MR. RAEMY: Not yet, but we do have five
13 answers to the five questions that were raised, I
14 think, on November 21st. And we're going to
15 distribute those today, and are ready to file
16 those as required.

17 HEARING OFFICER SHEAN: All right, thank
18 you. Let me just indicate this Committee
19 Conference on the proposed decision is being held
20 to a notice that was issued by the Committee on
21 November 21st. And as part of the notice of this
22 public hearing, the Committee propounded five
23 questions in appendix A during the preparation of
24 the PMPD some questions arose with respect to
25 certain details that were in the record that we

1 wanted further explanation.

2 And the staff's response was included in
3 its memorandum, and the applicant apparently also
4 has its response, as well, which will be
5 distributed when it's their turn to speak.

6 I think what we'd probably like to do is
7 to have the staff present its comments. And I'd
8 like to indicate to the staff that we have read
9 your document thoroughly, in some cases multiple
10 times. So we have a pretty good understanding of
11 what it is you have to say.

12 So, briefly, like to have you sort of
13 stick to the highlights of what staff considers,
14 let me say, your top-ten list of what it is that
15 you would like us to address.

16 And, with that, if the applicant has a
17 response to any of those items we'll afford you an
18 opportunity to comment on those.

19 So, with that, we'll go to the
20 Commission Staff.

21 MR. KRAMER: Okay. This shouldn't take
22 too long. I'm not sure we even have ten items.
23 I'll note that we also identified some minor
24 typographical errors, and we're going to submit
25 those in a separate email later. We consider them

1 to be so minor that they're not substantive, and
2 we didn't want to crowd this document with those
3 and/or spend a lot of time focusing on formatting
4 that, so we could get this to you.

5 With regard to ammonia we continue to
6 believe that it's significant. While we recognize
7 that our staff couldn't put an exact number on it,
8 we think the record is clear that it's not zero;
9 and additional particulate matter is going to be
10 created by the conversion of ammonia in an area
11 that already has more particulate than the state
12 and federal standards would like it to have.
13 Therefore we think it's significant.

14 And the more appropriate way to treat it
15 would be to call it significant, and then adopt a
16 statement of overriding considerations. And we
17 would like to see in the condition requiring
18 future study of technological solutions to the
19 ammonia problem, the requirement that they be
20 implemented as we proposed when the cost is at a
21 feasible level, they are, in fact, identified.

22 While it's nice to study it, it's more
23 important to actually get something done if a
24 solution does present itself on the horizon.

25 And then we're concerned about a change

1 that was made to the construction dust control
2 condition AQC-3, making the first of many
3 strategies, subparagraph (a) there, refer to AQC-4
4 as the standard of determining when adequate
5 watering has been done.

6 Our analysis was based on an assumption
7 that there would be no visible dust. That would
8 be the target. And so they would water, as
9 necessary, to make sure that there's no visible
10 dust.

11 The change that's in the PMPD would say
12 no dust that goes beyond 20 percent of capacity.
13 But that's visible. So that would be more dust
14 than we have used in our determination that there
15 would be no significant impacts.

16 So, we're concerned that we might have a
17 significant impact if we throttle back the
18 standard to 20 percent opacity.

19 And then there's another practical
20 aspect of that. The rest of the condition has
21 other measures, some of which require watering, as
22 well. And they all refer back -- or they continue
23 to have the tighter standard that's in condition
24 AQC-3, no visible dust, applicable to them.

25 So, it's inconsistent, we feel, to have

1 two different standards used to measure the
2 production of dust during construction. And, in
3 fact, in some cases both the air quality
4 construction mitigation manager and the CPM, who's
5 theoretically looking over his shoulder to see if
6 he's doing a good job, could be in a dilemma.
7 Because they may see dust, and it may not be clear
8 whether it's coming from the roads, which are
9 currently subject to the -- proposed to be subject
10 to the opacity standard, or from some other
11 source.

12 So they may not even be able to figure
13 out if visible dust is allowed, as long as it's
14 less than 20 percent. I hope I'm being clear.
15 You know, they could be sitting there scratching
16 their heads and not sure what to do. And we'd
17 like to avoid that kind of confusion on the
18 project site.

19 And we'd also point out that I don't
20 think the applicant asked for that change, as far
21 as we can recall. So they were comfortable with
22 the condition as it was proposed by staff.

23 HEARING OFFICER SHEAN: Let me interrupt
24 you, Mr. Kramer. Just all along -- I want to make
25 sure now I have this in the context that I haven't

1 had it previous, and then also, I think points up
2 why the Committee, in this particular case, as
3 well as Committees in other cases have been
4 struggling with this condition.

5 Let me just make sure that I can
6 identify where it is in AQC-3 that the standard is
7 no visible dust. And if you can identify that for
8 me? I think I have an idea but I want to make
9 sure I'm correct.

10 MR. KRAMER: If it's easier for you to
11 look at our comments, we've printed -- it's right
12 after subsection (w) in AQC-3. And it's reprinted
13 near the top of page 4 of our comments.

14 It starts out: Observations of visible
15 dust plumes would indicate that the existing
16 mitigation are not resulting in effective
17 mitigation." Then it has a series of three levels
18 of further efforts --

19 HEARING OFFICER SHEAN: So, in reality
20 that sentence doesn't, since it's any visible
21 dust, is that a more correct reading? You're
22 talking about there shall be no visible dust,
23 right?

24 MR. KRAMER: That's what the staff
25 intended this to mean, yes.

1 HEARING OFFICER SHEAN: Okay. And if
2 the Committee and Commission's mean that zero dust
3 if not practicable, but we are looking to find a
4 standard that is practicable and enforceable, and
5 it may be that some dust is allowed, but it is
6 limited by the terms of AQC-4. Isn't that just a
7 different standard?

8 You want zero dust; and the Commission,
9 at least, in some prior proceedings has voted
10 there can be some dust, but not a lot of dust. Is
11 that a --

12 MR. KRAMER: No, it's certainly a
13 different approach. I'd point out that just
14 because there's no visible dust doesn't mean we
15 still don't have PM10, because that's generally
16 invisible unless you've got so much of it that you
17 don't want to be in the area.

18 HEARING OFFICER SHEAN: I understand.
19 And we did go through this in the SMUD proceeding
20 where it became pretty clear that the staff
21 witness, at that time, was indicating we wanted to
22 regulate something we couldn't see.

23 And, you know, for certain things that's
24 quite fine. In this dust area, I think the
25 Commission, at least to the extent that they've

1 already voted on it, has indicated that zero dust
2 is not the standard that they choose to adopt.

3 But, anyway, we will review that and
4 we'll get back to you.

5 COMMISSIONER PERNELL: I guess my
6 question is being there, of having, you know,
7 profession in construction, it is difficult,
8 especially if you're doing site work, to have zero
9 dust.

10 I understand that the way you, and I
11 think it's outlined here, the way you control the
12 dust is through watering and running a water
13 truck. But, at some point there has to be, if
14 there's some digging going on or even if a truck
15 is delivering something, the dust coming out of
16 the back of the truck, if they're dumping rock,
17 for example.

18 I mean I don't want to have it so
19 restrictive that you can't do any work on the
20 site.

21 MR. KRAMER: Well, and I don't think
22 that --

23 COMMISSIONER PERNELL: And so when you
24 use the word or the intent that there shall be no
25 visible dust, that just really shuts down a

1 project, at least in the site-work stage.

2 MR. KRAMER: Well, we -- I --

3 COMMISSIONER PERNELL: So we're trying
4 to, I think, --

5 HEARING OFFICER SHEAN: -- I think
6 you're misunderstanding our point a little bit.

7 COMMISSIONER PERNELL: Okay.

8 MR. KRAMER: We're saying there's a
9 protocol here, so if you start to see visible
10 dust, then you throw more water at it basically.
11 That would be your -- if water is your control
12 mechanism, that would be your first approach.

13 COMMISSIONER PERNELL: Right, if that's
14 the mitigation.

15 MR. KRAMER: It's not saying stop; it's
16 saying work harder to control it.

17 COMMISSIONER PERNELL: Okay, then,
18 perhaps I misunderstood that. Is that your --

19 HEARING OFFICER SHEAN: Well, let me
20 just go through that again. If I understand that
21 the sentence that begins, Observations of visual
22 dust is a protocol for the commencement of
23 additional mitigation measures.

24 MR. KRAMER: Yes, number one --

25 HEARING OFFICER SHEAN: Is that what

1 that is?

2 MR. KRAMER: Right.

3 HEARING OFFICER SHEAN: Is that the
4 protocol for what to do, or is it the standard to
5 be met? That's another question here.

6 MR. KRAMER: Well, if you read through
7 the language after subsection (w), visible dust
8 means that it's not effective; the air quality
9 compliance mitigation manager implements the
10 procedures that follow there. The first of which
11 is more aggressive application of the measure.

12 So, if we're talking about water, it's
13 throw more water at it. Water more frequently.

14 HEARING OFFICER SHEAN: And so again
15 it's if you see any dust, right, observation of
16 any visible dust, because --

17 MR. KRAMER: I suppose a plume is a --

18 HEARING OFFICER SHEAN: Well, if it's --

19 MR. KRAMER: Maybe Mr. Ringer can speak
20 to --

21 HEARING OFFICER SHEAN: -- if it's no
22 visible dust --

23 MR. KRAMER: -- this a little bit.

24 HEARING OFFICER SHEAN: -- then that's
25 no visible dust. And if I understand correctly

1 from my notes of what we said, what the staff has
2 said, it is no visible dust. And no means not
3 any. Not a little bit, not plume versus puff,
4 it's no visible dust.

5 MR. KRAMER: Well, but they're not
6 penalized for the appearance of visible dust.
7 They'd be penalized if they don't work harder to
8 try to control it.

9 COMMISSIONER PERNELL: If the intent--
10 I'm sorry -- if the intent is if you see some
11 visible dust you need to do more mitigation to
12 mitigate that, you know, that's fine, at least
13 from my standpoint. But, if you start saying no
14 visible dust, and then the monitor on the site can
15 possibly shut down the site and all of that, then
16 we're getting into, I think, an area that's very
17 restrictive.

18 I'd just like to see some language that
19 adequately addresses the dust problem in a, you
20 know, more of a realistic way. If it's throwing
21 more water on it, then that's fine.

22 MR. RINGER: Mike Ringer for the staff.
23 It's not staff's intent to be prohibitive with
24 this. As you know, we have another condition, and
25 we had used it in the past, of the 20 percent

1 opacity standard.

2 Now, that requires somebody out on the
3 site to be trained with a visual emissions
4 evaluation certificate by ARB. We feel that by
5 far the simplest way to do this, and this is our
6 approach as being as practical as possible, saying
7 if you see any dust try to take care of the matter
8 by watering or whatever you have to do. And it
9 doesn't take anybody trained specifically to see
10 dust; it's just the fact that we want somebody out
11 there to be aware that if there's dust, that there
12 may be a problem associated with that. Put some
13 water on it and see how it works.

14 It's the simplest thing we could come up
15 with and we prefer to do it that way rather than
16 going down this path of being overly prohibitive
17 and --

18 COMMISSIONER PERNELL: Yeah. You know,
19 I would agree with that, but I'm not sure that's
20 what this is saying. And maybe I'm not
21 interpreting it correctly, so --

22 HEARING OFFICER SHEAN: I think if the
23 staff wants to work with this Committee and the
24 Commission on trying to get to this objective,
25 which is we're not being prescriptive, we have

1 objectives here. And a little bit of dust like
2 dust coming off the wheels of a vehicle, if you
3 know as you observe it whether you're certified by
4 the ARB or you're just an average guy, that, you
5 know, this isn't a lot of dust. They're picking
6 up a little dust off a dirt road. I don't really
7 need to send a watering truck out there, because
8 that dust is going to be back to the ground before
9 I even get the watering truck there.

10 That shouldn't be what the concept of
11 what the Commission is requiring somebody to do.
12 The concept of what the Commission's requiring
13 somebody to do, if you've got an excessive amount
14 of dust that is going to either be a health
15 problem to workers or because it goes off site is
16 a health problem potentially to the public, then
17 you need to work on that.

18 But a little bit of dust here and there
19 is, you know, we probably get more stuff in the
20 air once all these leaves dry out here in the
21 Sacramento streets, just driving through the
22 streets, than might be generated on a work site in
23 any given circumstance.

24 So, real life is you're dealing with
25 dirt and you're dealing with moving it around or

1 digging it, you're going to get some dust. And
2 it's just the prescriptive nature of no visible
3 dust is not -- is overly tight in the Commission's
4 view.

5 So, if you want to help us with that and
6 get some language that staff can be in accord
7 with, that's fine. Otherwise, we're working on
8 it, you know, merely from the Committee's point of
9 view. And we think we have, in this, by reference
10 to AQC-4, the Commission's objective, as it's
11 already voted on, as well.

12 Mr. Garcia.

13 MR. GARCIA: Yeah, I have a question for
14 Mike. In the language of the comments, staff
15 comments, did you have in mind a particular point
16 of view from which the dust would be observed? Is
17 that as seen from the fenceline, or as seen from
18 ten feet from the operation, or --

19 MR. RINGER: No, we didn't have any
20 particular view in mind. I agree with Mr. Shean's
21 assessment that basically this is a common sense
22 approach. We have to walk a fine line here in
23 trying to write conditions of certification,
24 realizing that staff is not going to be out there
25 much of the time or most of the time. Nobody is

1 going to be out there looking over their
2 shoulders.

3 Therefore, we've tried to describe some
4 method whereby the AQCM knows that if there's a
5 potential problem you should take care of it,
6 without having this very fine line, for instance,
7 of the 20 percent opacity.

8 I mean even that, as much as we might
9 try to lay out a set of principles whereby
10 somebody should do something onsite, basically
11 because there's not extreme oversight it all boils
12 down to common sense for somebody on the site.

13 And for us the simplest thing that we
14 could come up with is common sense. If you see
15 some dust out there, try to look and see, you
16 know, where it's coming from and why and if you
17 can do anything about it. Rather than saying 20
18 percent opacity, because then, you know, are they
19 going to stand out there if it's 19 percent and
20 just, you know, get ready to go. If it's 21
21 percent do they figure, well, it's not that bad,
22 they don't need to do anything?

23 The very prescriptive set of conditions
24 that --

25 HEARING OFFICER SHEAN: But that's your

1 condition. I mean this AQC-4 came out of the
2 minds of the staff.

3 MR. RINGER: Right, and I --

4 COMMISSIONER PERNELL: Well, I do know
5 I've --

6 MR. RINGER: -- am not exactly sure
7 why it's in here, because in our future
8 recommendations for conditions we got rid of AQC-
9 4.

10 COMMISSIONER PERNELL: I agree with your
11 verbal statement that's a common sense approach,
12 and if you see some dust there needs to be
13 mitigation to eliminate that dust.

14 And I guess what I'm struggling with is
15 when I read no visible dust that's not exactly
16 what you're saying. And I'm just struggling for
17 some language that we can agree on that describes
18 the common sense approach that you're talking
19 about.

20 MR. RINGER: I think -- can I see the
21 original --

22 COMMISSIONER PERNELL: If you have that,
23 you can show it to me.

24 MR. RINGER: Yeah. It actually just
25 says observations of visual dust plumes would

1 indicate that the existing mitigation measures are
2 not resulting in effective mitigation.

3 Maybe it's something as simple as may
4 indicate that the existing mitigation measures are
5 not resulting. I mean I don't think anywhere in
6 here that it says no dust at all is to be allowed
7 anywhere on site.

8 HEARING OFFICER SHEAN: No, it didn't,
9 but that's why I asked Mr. Kramer where in
10 condition AQC-3 we came up with the target being
11 no visible dust, because that language is what was
12 used earlier by the staff. Our target is no
13 visible dust.

14 MR. RAEMY: Can I comment at this stage
15 or --

16 HEARING OFFICER SHEAN: Yes.

17 MR. RAEMY: -- should we wait?

18 HEARING OFFICER SHEAN: Sure, go ahead.

19 MR. RAEMY: We read it exactly the way
20 the Commission clarified, that AQC-3 and AQC-4,
21 which was there's a concept in AQC-3 that says
22 when you look at visible dust, you know, you get
23 an indication of whether you have a problem or
24 not, or whether you need to do something or not.

25 Then in AQC-4 we had the standard that

1 was defined. If there is more than 20 percent
2 opacity then you have a problem. Below that, you
3 don't have a problem.

4 So, you know, the applicant, when we
5 read that, were comfortable with it because we
6 understand that we have to do something about it
7 if there is a problem, and we've got a standard
8 that is defined with 20 percent. And we have a
9 person on the site who can assist making that
10 determination.

11 So I think that the clarification from
12 the Committee is extremely welcome by the
13 applicant because it's a practical clarification.
14 It allows us to build a site and we don't have a
15 zero dust requirement, which would be very
16 difficult, if not impossible, to meet.

17 COMMISSIONER PERNELL: So you're in
18 favor of the 20 percent, is that what you're
19 saying? Or --

20 MR. RAEMY: Yes, the AQC-4, you know,
21 talks about visible plumes that exceed 20 percent
22 opacity. And that would be the standard that
23 would be utilized.

24 COMMISSIONER PERNELL: But I think the
25 argument from the -- and I don't want to beat this

1 to death here, but I think the argument from staff
2 is that that could be pretty hard to measure.

3 I mean if I walk out there and see dust,
4 I don't know whether it's 20 percent or not, a lay
5 person. You're saying that you would self-police
6 that?

7 MR. RAEMY: We'll have a person onsite
8 in the requirements -- what's the name of that
9 person, Jerry?

10 MR. SALAMY: Air Quality Mitigation
11 Manager.

12 MR. RAEMY: Who is trained to make that
13 determination. And that's the person who would
14 assist with that. I understand that zero dust
15 would be easier to measure, because as soon as you
16 see something, you know, you have a problem, but
17 that's not practical --

18 COMMISSIONER PERNELL: Right, but that's
19 a little restrictive, I think.

20 MR. RAEMY: So, to have some sort of
21 benchmark I think the 20 percent that is referred
22 to in AQC-4 is, you know, is what we have looked
23 at as being the standard that would be applied.
24 That's how we understood that.

25 So the clarification once again that you

1 provided is exactly, you know, what we had in
2 mind, also.

3 HEARING OFFICER SHEAN: Okay, rather
4 than beat this dead horse, maybe we're in an
5 evolutionary process here. If staff has something
6 that you think you might want to come back with,
7 that you think meets the objectives that have been
8 discussed here by the Commissioners, that would be
9 great.

10 But you understand where we're coming
11 from, and between the staff and the Committee and
12 the Commission and the various applicants, we'll
13 probably, you know, inch our way toward a much
14 better condition eventually. But I think this is
15 pretty good for where we are now.

16 MR. RAEMY: And if I may, just for the
17 record, also, on AQC-13, since it's been
18 discussed, we also echo the clarification from the
19 Committee on that item.

20 HEARING OFFICER SHEAN: And I guess what
21 I would indicate is that we all know that the
22 rules of the various districts can capture
23 essentially a problem, and take account of new
24 technologies. And, if necessary, require the
25 applicant to retrofit its unit sometime in the

1 future should this basically come together with a
2 combination of yes, there is an impact, and yes,
3 there is a technology which will further reduce
4 ammonia emissions. And that that is appropriately
5 left to the District.

6 Okay. Your top ten list.

7 MR. KRAMER: Okay, then we may propose
8 something additional in subsequent comments.

9 On to biology. There the final staff
10 assessment recommended various measures for
11 adoption by the County on the portion that it's
12 approving, the wells, the brine wells, injection
13 and extraction wells, and the pipelines that
14 transmit the brine to the power plant.

15 Those were just done in a narrative form
16 and they didn't make it into the PMPD. And
17 because our goal, certainly, for the Commission's
18 document was that it be a complete analysis of the
19 project, the whole of the project. And the County
20 is, in fact, relying on it as the environmental
21 document for their actions.

22 HEARING OFFICER SHEAN: Yeah, we don't
23 have any problem with including that stuff. And
24 we will do that.

25 MR. KRAMER: Okay, C-1 to C-9?

1 HEARING OFFICER SHEAN: Say again?

2 MR. KRAMER: Bio C-1 to C-9.

3 HEARING OFFICER SHEAN: That's right.

4 MR. KRAMER: Okay, recommendations to
5 Imperial County with respect to the pipeline and
6 any other facilities within their jurisdiction.

7 MR. KRAMER: Okay. I think Mr. Raemy
8 had at least one concern about these.

9 HEARING OFFICER SHEAN: Okay.

10 MR. KRAMER: Let me -- before he
11 describes that, our intent was not to change
12 anything that we recommended, but simply to put
13 them in a form that would be usable by the County,
14 because the County tells us they are adopting a
15 general condition to the effect that the
16 conditions recommended by the Commission will be a
17 part of their approval.

18 And we're told they may be even taking
19 their action today. So we want to make it easy
20 for them by spelling it out and not forcing
21 anybody to try to figure it out and maybe get it
22 inconsistent, which would just be a headache down
23 the road.

24 HEARING OFFICER SHEAN: Will do, yeah,
25 okay. But the applicant has a comment with

1 respect to one of these --

2 MR. RAEMY: Yes, to Bio C-1 through Bio
3 C-8, the concept that's explained here, and we
4 probably need a little bit more time to review
5 these conditions, and just formalize our comments,
6 but the general concept on the biology section is
7 we have no concern with the clarifications in
8 respect to the biological opinion. Those
9 conditions are fine.

10 The first ones, Bio C-1 through Bio C-9,
11 which are meant to clarify, you know, descriptions
12 that were earlier in the text and now are pushed
13 forward as recommendations for the County and
14 others to apply, we feel some of those conditions
15 would create more, you know, potential
16 contradictions rather than provide clarifications.

17 For instance, Bio C-5 seems to define an
18 acreage of mitigation that would be required for
19 burying our well. In the existing conditions of
20 certification we have Bio-18, we have Bio-19 that
21 define how we will go about defining those
22 mitigations. And by just stating in this Bio C-5
23 that 68.25 acres shall be provided for the impact
24 that we have on the linears, we seem to be putting
25 the answer before the equation.

1 And in Bio-18 and Bio-19 we're defining
2 the equation, we're defining how we're going to
3 define that mitigation. And Bio C-5 we bring the
4 answer and we say, well, it's 68.25 acre, with the
5 caveat that well, if Bio-19 is already provided
6 that mitigation, we might be able to deduct those
7 mitigation acreage appropriately.

8 Our concern is what if Bio-19, for
9 instance, defines that the impact is really 30
10 acres, for instance. If Bio C-5 says we should
11 provide 68 acres, we cannot deduct 68 from 30
12 because we have a number that's larger. So, we
13 create potentially some issues.

14 Our initial feedback would be simply Bio
15 C-1 through Bio C-9 should be excluded. The
16 clarifications are not necessary. And we had the
17 concepts already discussed in the text. And I
18 think we have the mechanism we need to be able to
19 move forward.

20 If, you know, we need to maintain these
21 conditions then I think we need to do more work at
22 reviewing those and making sure that we don't have
23 the type of issues that I just raised, you know.

24 MR. KRAMER: We're certainly open to
25 considering any inadvertent conflicts that we may

1 have created. So we're willing to sit down with
2 the applicant and look at that, and report back to
3 the Commission before next week.

4 MR. RAEMY: All right, so we'll work on
5 those within the next day or two and work with you
6 on that.

7 HEARING OFFICER SHEAN: I guess the
8 question that sort of arises is there's an obvious
9 parallel between the conditions of certification,
10 just the Bio conditions, and the Bio C conditions.

11 And I suppose for the sake of some
12 regulatory efficiency and regularity that to the
13 extent that the Bio, the non Bio C conditions can
14 be recommended to the County, that's probably a
15 better thing to do than to make up something new.

16 So I don't know, I mean the thrust, I
17 understand, of Mr. Raemy's comments is rather than
18 trying to make Bio C-5 work, we already have Bio-
19 18 and -19 that work. Let's just go with those.

20 Now, if you think you've done the math
21 and have the answer, well, that's a different
22 matter. But that answer apparently did not appear
23 in the Bio portion. So, anyway, with that, let's
24 just ask you guys to do precisely that. Look at
25 these and we'll try to accommodate them after

1 you've had a chance to sort of cross-check them
2 and review them.

3 All right?

4 COMMISSIONER PERNELL: Did you have a
5 comment?

6 MR. WORL: Yes, I would like to say that
7 the risk here is that these conditions that are
8 recommended to the County, if they're not put
9 forward in some form in the final decision, then
10 there's no regulatory authority over these issues
11 for the pipelines, wellheads and that's a concern.

12 The intent was that the County was going
13 to work with us; that we were going to have a
14 single compliance program for the construction and
15 operation phase. And since the wellheads, well
16 pads and brine pipelines are excluded from our
17 jurisdiction, including recommendations to the
18 County, was going to be the mechanism for insuring
19 that smooth coordination.

20 With these completely extracted we run
21 the risk of later on having some conflicts over
22 whether or not certain provisions do, in fact,
23 apply.

24 HEARING OFFICER SHEAN: The Committee's
25 really not talking about extraction. We

1 understand the concept of recommending to the
2 County some conditions.

3 I think what we're saying here is that
4 particularly if you're going to have a coordinated
5 compliance effort, it is that the better thing to
6 do is to see if you can make the conditions you've
7 already agreed upon work in the County situation.
8 Unless there's something obvious that won't work,
9 then stick to your Bio conditions as opposed to
10 creating something new and different in the Bio C
11 conditions.

12 That's all we're talking about. We want
13 to --

14 MR. WORL: No, the --

15 HEARING OFFICER SHEAN: -- get something
16 that we can include as a recommendation to the
17 County in the final decision. We're not talking
18 about not having it. What we're trying to do is
19 create a certain regulatory efficiency in using
20 the same material if it's usable. Okay?

21 But you do have some stuff that relates
22 to the federal biological opinion in your
23 document, right?

24 MR. KRAMER: Right. We did provide all
25 of those amendments.

1 HEARING OFFICER SHEAN: Okay. Does the
2 applicant have any comments with respect to --

3 MR. RAEMY: No, that --

4 HEARING OFFICER SHEAN: -- those?

5 MR. RAEMY: -- we are perfectly fine
6 with, obviously this is a welcome clarification.
7 We'll go through that in more detail and if we see
8 a disconnect we'll raise that. But so far the
9 disconnects we've seen, staff raised some very
10 good point about noise level and description. And
11 we thank you for that.

12 So it seems that we are working in the
13 same direction as far as the biological opinion is
14 concerned. Our concern, again, not to repeat
15 myself with this Bio C-1 through C-9 is that we
16 feel we had something that worked just fine. And
17 now we're potentially creating more, you know,
18 contradictions or mismatch than we're providing
19 clarifications. And that's a concern.

20 MR. KRAMER: Well, it was simply meant
21 to help the County. And to help us make sure they
22 did it. We will revisit that and see if it can be
23 improved.

24 HEARING OFFICER SHEAN: Okay.

25 MR. KRAMER: Move on?

1 HEARING OFFICER SHEAN: Sure.

2 MR. KRAMER: I think the only other
3 comment to highlight was in the Committee's
4 revision to general condition Com-8. For some
5 reason the public wasn't included as one of the
6 groups that should be -- whose interest should be
7 kept in mind in determining what suspicious
8 behavior might be.

9 HEARING OFFICER SHEAN: Okay, we
10 understand.

11 MR. KRAMER: We'd just suggest they be
12 added.

13 HEARING OFFICER SHEAN: Right.

14 MR. GARCIA: What page?

15 MR. KRAMER: Page 38 of our comments,
16 page 226 of the PMPD.

17 HEARING OFFICER SHEAN: Again, let me
18 indicate. I think the Com-8 language is an
19 evolving thing here. We're trying to get, to make
20 sure that what we're doing is adequately
21 protecting the facility and the public interest,
22 but at the same time not going overboard and
23 creating a situation where otherwise lawful
24 activity becomes suspect.

25 So we understand this and we'll --

1 MR. KRAMER: And we seem to have a new
2 version at the staff level every week almost.

3 HEARING OFFICER SHEAN: Well, and I
4 think, at least in the SMUD proceedings we tried
5 to work this out. And to the extent that I'm
6 aware, it's beginning to become pretty close to
7 the standard. We'll look at this public thing and
8 add it if it's appropriate.

9 Let me also indicate, you know, you had
10 a comment with respect to facility closure in your
11 biology thing, because we took --

12 MR. KRAMER: Oh, yes. I probably should
13 mention that one.

14 HEARING OFFICER SHEAN: Okay, well, I'm
15 mentioning it. Let me just indicate that one of
16 the -- again, one of the things that the
17 Commission is concerned about is not having as
18 much in one place as we can have it.

19 So to the extent that the general
20 conditions of compliance provide for a closure
21 plan, if we can put everything there, that's what
22 we'd like to do. If there's a good reason to have
23 an exception, then we need to have that noted.
24 And we'll try to accommodate that.

25 And so, obviously you're prepared to

1 discuss that, so I'll let Mr. Brownell and Mr.
2 Kramer go ahead with that.

3 MR. KRAMER: Well, our concern is that
4 the general requirement for a closure plan would
5 not -- we're looking for something more than the
6 normal closure plan with regard to biology.

7 Staff wants everybody involved at that
8 point in time to ask themselves not only is it
9 going to hurt the environment if the plant's just
10 closed in a normal way, they want to ask the
11 question would it help the environment, be
12 beneficial to the environment if the facilities
13 were completely removed. In other words, restore
14 the habitat that the power plant will be taking
15 up.

16 And that question won't be asked if we
17 just applied the normal formula for a closure
18 plan, because it only looks to asking basically is
19 the status quo of power plant closing down and
20 sitting there going to impact the environment
21 adversely.

22 We want to go further and say would it
23 be a good idea to tear it down and restore the
24 habitat. So, as far as where you place the
25 reminder, if you will, to cover that topic it

1 could be in the general condition that talks about
2 closure. I don't think that would cause any
3 trouble.

4 Staff put it in Bio-6 at this point, but
5 you could easily move the requirement and we'd be
6 satisfied with that, wouldn't you, Jim?

7 MR. BROWNELL: Yeah.

8 MR. KRAMER: But we need to make a note
9 for future generations because none of us are
10 likely to be around to remember to cover that
11 question.

12 MR. BROWNELL: I'm Jim Brownell; I
13 supervise the biology unit. Where we have a
14 facility that is in sensitive biological habitat,
15 and our crystal ball tells us at this time that it
16 will be a concern at the time of closure, we have
17 added that condition consistently to the
18 biological section conditions of certification.

19 Where we look at a facility and decide
20 it's industrial, or that it's likely to be urban
21 development around it and no chance of having any
22 value in the future for biological resources, we
23 haven't put it in.

24 So the staff level consistency is to
25 look at it and see if it appears to be an issue in

1 the future. So to address it in the biology
2 section so it's a clear signal to those people
3 that will review it, that they need to look at
4 that.

5 Particularly we're concerned in this
6 case about the transmission lines, and some other
7 facilities of that type that would make sense to
8 take down at Salton Sea during closure if it were
9 happening today. I don't know what it will look
10 like 30 years from now, but it needs to be
11 considered.

12 HEARING OFFICER SHEAN: All right. And
13 I'll just tell you, from our perspective, whether
14 it was a sensitive biological habitat or, as you
15 say, an industrial area, or a greenfield or
16 whatever, I think it is inherent in the questions
17 that will be asked at the time of closure of the
18 facility whether or not it's appropriate to remove
19 the facility.

20 And that's a question that will be
21 raised in the context of whatever that future
22 circumstance is. And so, I mean we understand
23 what the staff's concern is here. We'll take a
24 look at it and see whether or not, given the fact
25 that this is probably something that is inherent

1 in every closure of every type of facility,
2 because even the industrial facility, it may be
3 that it's appropriate to shut it down because
4 other industrial facilities have moved out and now
5 you have other land uses, or other things like
6 that.

7 So, you know, it's so speculative as to
8 why you would consider doing it, in some cases.
9 But we've got the idea. Let us work with it and
10 we'll get back to you on the revision of the PMPD.

11 MR. BROWNELL: Thank you.

12 HEARING OFFICER SHEAN: Thank you.

13 COMMISSIONER PERNELL: Thank you.

14 HEARING OFFICER SHEAN: Anything else?

15 MR. KRAMER: No, I think that covers the
16 highlights.

17 HEARING OFFICER SHEAN: Okay. Anything
18 from the applicant?

19 MR. RAEMY: Yes, in addition to what we
20 discussed so far I think in the executive summary,
21 that's on page 1 of the document that staff
22 provided yesterday, propose a clarification or
23 correction, contribution to an agricultural land
24 conservation program instead of a deed
25 restriction.

1 I think what we're dealing with here is
2 an and/or. Based on the discussions that we had
3 with staff on land use, the concept that was
4 discussed was that we would provide a deed
5 restriction on the land that we own that's located
6 directly east of the Leathers facility. That's a
7 piece of land that provides 96 acres, and that's
8 where the amount came from.

9 And we would work with the County in
10 developing a program that would allow them to
11 accept this deed restriction as a contribution to
12 this program.

13 So by adopting the correction that's
14 required here I'm afraid we don't allow that
15 negotiated solution to take place. I want to make
16 sure that, you know, we stay consistent with the
17 negotiations and discussions that took place; and
18 that we can actually implement this plan.

19 HEARING OFFICER SHEAN: Okay, I think we
20 can probably handle that. Fundamentally what
21 we're talking about is some compensatory
22 agricultural lands, and so, you know, -- and the
23 executive summary is not intended to be a finding
24 or a condition or anything else like that. I
25 don't think there's anybody in their right mind,

1 including a court, that would review that and say
2 that has to have a meaning that's different from
3 what is provided for in the remainder of the
4 decision.

5 So, we'll work with that.

6 MR. RAEMY: We'll probably have a
7 similar comment then to Land-6, just to make sure
8 that Land-6 reflects that concept.

9 And the other minor clarification that
10 we have in the project description suggested that
11 we replace the word "substation" with "switching
12 station". That's probably fine. I just want to
13 clarify, you know, from the facility, itself. We
14 will not just have two lines leaving the facility.
15 There's a little bit more electrical components
16 that are associated with that. There are
17 breakers, there are switches, there are PTs, CTs.

18 And once you have a look at, you know,
19 all this electrical equipment, what's a switching
20 station, what's a substation? That's a little bit
21 of gray area. I want to make sure that we're not
22 restricted in the design of our own plant with
23 that.

24 Right now the configuration that we plan
25 on having is a three-breaker configuration with

1 room for a fourth breaker in the future.

2 MR. WORL: No, the intent was simply to
3 clarify that there is not going to be -- that the
4 Bannister substation is going to be the substation
5 for the project. And that there's not going to be
6 a substation onsite. That was the only intent of
7 bringing that up.

8 MR. RAEMY: And these are the only other
9 comments that we had to this document.

10 MR. SALAMY: At this time.

11 MR. RAEMY: At this time.

12 HEARING OFFICER SHEAN: Let's talk about
13 at this time. If we're going to try to do this on
14 the 17th obviously the Committee has a fair amount
15 of work to do. And if the parties are going to
16 have a smooth running presentation before the full
17 Commission we need to have anything else that you
18 want to revise to us, other than at 9:59 a.m. on
19 Wednesday morning, the 17th. That is not going to
20 help anybody.

21 So, if there's some stuff that you want
22 us to see, if there's some stuff that staff would
23 like us to see, it should be appropriately
24 docketed and distributed. And then get to us so
25 that we can look at it and incorporate it in any

1 errata that we might be presenting to the full
2 Commission.

3 I think the general approach that our
4 office takes is that the line between a revised
5 PMPD and one that is corrected or modified or
6 amended goes largely to the question of whether or
7 not you're going to substantially change any
8 condition, and most particularly if that change is
9 going to loosen a standard or mitigation measure
10 that's being applied to the project.

11 As I look at this, I don't see such an
12 amendment or revision that loosens anything. Do
13 either of the parties see it that way? That
14 there's a substantial revision that would loosen
15 any of the mitigation measures if we adopted any
16 of the suggestions that have been made here today?

17 MR. RAEMY: Not the applicant; we don't,
18 no.

19 MR. KRAMER: No. I think we've just
20 asked for a couple of tightenings, if anything.

21 HEARING OFFICER SHEAN: All right.
22 Good, I think we're in accord on that.

23 MR. RAEMY: What we do have is the
24 answer to the five questions that were raised. I
25 don't know if it's appropriate to distribute

1 those?

2 HEARING OFFICER SHEAN: Yes, that would
3 be appropriate at this point. Let me indicate we
4 have read the staff's responses to those, and
5 probably some of the information you got in your
6 response was also -- may have been from either the
7 County or from the applicant. Is that the case?
8 Did you talk to them in formulating any of your
9 answers?

10 MR. WORL: We formulated these, had
11 staff do that. And then we circulated it then to
12 the applicant, as well.

13 HEARING OFFICER SHEAN: Okay. So there
14 was --

15 MR. WORL: And the applicant had
16 provided us with an earlier draft, as well, of
17 their Committee responses.

18 HEARING OFFICER SHEAN: Okay. Now, is
19 there something that the applicant wants the
20 Committee to do with respect to any of the
21 responses that you've given us? Or are your prior
22 comments, believe you pretty much --

23 MR. RAEMY: We touched on that.
24 Question number 5, for instance, --

25 HEARING OFFICER SHEAN: Right.

1 MR. RAEMY: -- which verified the Land-
2 6. And it's really that, I think, a
3 clarification. I think it does not change the
4 intent of what was discussed with staff. So,
5 hopefully we can all agree that's the case.

6 HEARING OFFICER SHEAN: Okay. Let me
7 indicate that the Committee appreciates the fact
8 that you responded to these and is satisfied now
9 with the answers that they have answered the
10 questions that were in our minds as we were
11 formulating the PMPD. And these are helpful and
12 fortunately dispel -- I think we thought we knew
13 the answers, and essentially any concerns we had
14 with respect to that have been dispelled by the
15 responses that have been given to us by the
16 applicant and the staff.

17 Is there any other matter that either of
18 the parties wish to bring to the attention of the
19 Committee before we begin to correct certain
20 portions of the PMPD? The applicant?

21 MR. KRAMER: Yes.

22 HEARING OFFICER SHEAN: Okay.

23 MR. KRAMER: In their response to
24 question 5 they're suggesting that their
25 preservation of the 96-acre parcel would only be

1 for the life of the project.

2 I'll just note that normally
3 conservation easements are in perpetuity. And
4 they're not made for shorter durations than that.
5 So I think we might have a problem with that
6 aspect of it. I'll just highlight that. That
7 obviously could be dealt with in compliance, but
8 we don't want to hide the ball from anyone.

9 MR. RAEMY: Yeah, I think we can deal
10 with that easy. I can tell you where that came
11 from. When I read perpetuity I just thought it
12 was an awfully long time, so I tried to put a cap
13 on that. But, --

14 MR. KRAMER: Yeah, it's meant to be
15 awfully long.

16 (Laughter.)

17 MR. GARCIA: Mr. Kramer, just to clarify
18 in my mind. The condition Land-6, the language
19 specifically says perpetuity, is that correct?

20 MR. KRAMER: I'd have to look. The
21 assumption is, in practical terms, if ag land goes
22 under it never gets restored to ag land, because
23 it just costs too much.

24 And therefore, you know, some would
25 argue that this protection of making sure other ag

1 land isn't lost is not exactly the best form of
2 mitigation. But it's the best that we have. And
3 so if you presume that the ag land that's lost is
4 going to be lost forever, then obviously the
5 protection that's mitigating for it should last
6 the same amount of time, forever.

7 MR. GARCIA: Okay. I just took a real
8 quick read of Land-6, and I didn't see anything in
9 there indicating that if the project were to close
10 down --

11 COMMISSIONER PERNELL: It's on page 88
12 of the PMPD.

13 MR. GARCIA: -- if the project were to
14 close down and it would be restored back to the
15 original condition, that their obligation to
16 provide the offset terminates. Which is what I
17 thought I heard you say.

18 MR. KRAMER: Oh, no, we assumed that
19 even if they close it down there's going to be
20 paving, there's going to be other disturbances,
21 and nobody's going to farm that parcel again.

22 And I suppose you could argue that even
23 if they do begin to farm it again, that there's
24 still reason to protect farmland that is lost for
25 a period of time. But, on the assumption that

1 they will not restore it, at the best I think
2 power plants are torn down to the, you know,
3 surrounding elevation. But the land has either
4 been, oh, leached out, or it's still paved over,
5 and people just don't farm it.

6 You know, farmland goes for maybe
7 \$10,000 an acre. It would probably cost you that
8 much to tear out the asphalt and restore the top
9 soil. Probably cost you two to three times that.
10 So that's why people don't do it.

11 And if it's on the edge of an urban
12 area, then chances are it's going to go to some
13 other industrial or commercial use, not be farmed
14 again.

15 So I suppose that's an option that could
16 be explored in that very remote possibility. But
17 it's nothing that we built into the condition.
18 The condition is not that specific.

19 What I've been telling you is the way
20 conservation programs are generally run. And none
21 of that is spelled out in this condition.

22 HEARING OFFICER SHEAN: Well, I think
23 that's something we probably have to look to is
24 what is the standard in the trade, if you will.
25 Because the Commission has, on numerous occasions,

1 had a situation where land has been set aside by
2 either easement or some sort of compensatory
3 agreement.

4 And to my knowledge, having done a
5 couple of those, we have not got into the question
6 of perpetuity versus whatever is the custom in the
7 trade. Because if you really mean perpetuity,
8 that means forever.

9 MR. KRAMER: Right, and generally it's
10 transferred to an agency like the American
11 Farmland Trust, a private, nonprofit. And it owns
12 the property. And the applicant doesn't really
13 have the right to demand his easement back. He'd
14 have to probably buy it from them. And they
15 hopefully would be reluctant to sell to them
16 because they're trying to protect farmland.

17 HEARING OFFICER SHEAN: Okay. We've got
18 the idea. Anything more?

19 We're about to gavel this thing to a
20 close. Is there anybody who came on the phone who
21 has comments? Do we have a new caller?

22 MS. GULESSERIAN: Yes, Tanya Gulesserian
23 with CURE is here. I don't have any comments at
24 this time.

25 HEARING OFFICER SHEAN: Good morning,

1 Ms. Gulesserian, happy to have you.

2 MS. GULESSERIAN: 'Morning.

3 HEARING OFFICER SHEAN: Let me just
4 indicate we've gone through comments from the
5 staff. You probably received those by email. And
6 we are going to work to turn around a Commission
7 proposed decision for consideration on the 17th.

8 All right, any other matter before us?

9 COMMISSIONER PERNELL: Mr. Shean. I
10 would just indicate, first of all let me thank
11 staff and applicant for working together on this.
12 And, of course, the intervenors.

13 We have a fairly tight schedule. And
14 one thing that -- and the Chairman hasn't said
15 much because of his bug -- but one thing he
16 doesn't like and I don't like is surprises at the
17 Commission meeting.

18 So I'm encouraging both parties to work
19 together to get this resolved for whatever it is,
20 and not come up with any new issues at the
21 Commission meeting.

22 So, it sounds like that you're in
23 agreement with that, and we can continue to move
24 forward. But, I'm just -- this is just a word of
25 advice. If there's something new come up that you

1 can't agree, it kind of throws the whole process
2 out of whack. And, you know, the last thing you
3 want to do around Christmastime is irritate the
4 Chairman.

5 (Laughter.)

6 COMMISSIONER PERNELL: Thank you.

7 HEARING OFFICER SHEAN: All right. If
8 there's nothing further then we're going to
9 conclude the meeting, and thank you very much for
10 your participation. We will see you here in a
11 week. Thank you.

12 MR. RAEMY: Thank you very much.

13 (Whereupon, at 10:07 a.m., the Committee
14 Conference was adjourned.)

15 --o0o--

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I, PETER PETTY, an Electronic Reporter,
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